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## Professional Agency in the Ecology of Wrongdoing

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## **Professional Agency in the Ecology of Wrongdoing**

### *Abstract*

This study offers an account of individual agency within a constructivist view of professional wrongdoing. The main contribution is a model in which the neglected role of individual professionals is foregrounded, offering the basis for testable propositions about future misconduct. Professionals are represented in the model neither as “bad apples” nor as passive recipients of social control; instead, they formulate independent understandings of wrongdoing and lines of action in response to the combined influences of globalization and of collective actors, such as states and professional societies. The model is derived inductively from data on the wealth management profession, which specializes in developing tax avoidance strategies for high-net-worth individuals. This case is particularly appropriate because tax avoidance is among the most hotly-contested domains of professional misconduct globally, particularly following the Panama Papers scandal of 2016. Drawing from 65 interviews with wealth managers in 18 countries, supplemented by data from newspaper accounts and the professional association, the analysis yields a model that adds granularity and variation to the constructivist approach.

“Professional men, they have no cares,  
Whatever happens, they get theirs.”

—Ogden Nash, 1945

## INTRODUCTION

How should we account for individual agency in professional wrongdoing? This is an open question in contemporary theories of professional misconduct, where recent research foregrounds actors such as professional societies, states and firms (Muzio et al., 2016; Cooper, Dacin and Palmer, 2013). Scholars moved in this direction partly to correct for decades of over-individualized models in studies of white-collar deviance (Klapp, 1956; Robinson and Greenberg, 1998; Ashforth et al., 2008). To these studies of “bad apples” (Felps, Mitchell and Byington, 2006), theoretical orientations such as constructivism offered a counterpoint, proposing that wrongdoing “is the result of a two-way interaction between organizations and social control agents. The latter entities have the institutional role of drawing the lines that define legal, ethical and socially responsible behaviors” (Clemente and Gabbioneta, 2017: 1).

This paper argues that the pendulum may have swung too far, causing scholars to lose sight of individual professionals and their capacity to develop their own lines of action (Blumer, 1969). Thus, this study seeks to fill a gap in knowledge surround the question: *how do individual professionals participate in and respond to the definition of their activities as wrongdoing?* Constructivist theories do not provide the analytic tools to answer these questions.

The present study will take up this question using the empirical case of tax avoidance, because it has been identified by Cooper, Dacin and Palmer (2013) as among the most fruitful domains for examining the social and institutional construction of professional wrongdoing. Like some other domains of professional practice—such as the medical trade in human cadavers (Anteby, 2010), or the manufacture of dietary supplements (Ozcan and Gurses, 2017)—facilitation of tax avoidance

resides in an ethical “grey area” (Jackson and Brammer, 2014). Unlike tax evasion, which is illegal, tax avoidance involves reducing a firm’s or an individual’s tax obligations without breaking any laws; until recently, this was treated as an uncontroversial matter of common sense in business and personal finance (Scholes et al., 2008). But the moral valence of tax avoidance began to change rapidly after the global financial crisis, creating a “tax shaming” culture that branded avoidance—and the professionals who make it possible—as immoral and socially unacceptable (Barford and Holt, 2013). Later, moral condemnation of the practice grew exponentially with the Panama Papers’ revelation of the immense scale of tax avoidance by wealthy individuals worldwide (Obermayer and Obermaier, 2016).

This transformed the global “ecology” of professional standards, foregrounding actors and practices that previously operated in obscurity. In the corporate arena, the major players were the Big 4 accounting firms, which came under intense fire from policy-makers, activists and scholars alike (Sikka, 2017). For private clients, the key professional facilitators of tax avoidance were wealth managers—the secretive profession of lawyers, accountants, banks and others who specialize in protecting the fortunes of high- and ultra-high-net-worth individuals (Winters, 2011). Little-studied until recently (Hofri, 2014), the profession became internationally known through the Panama Papers as the facilitators of private tax avoidance “on an industrial scale” (Harding, 2016a).

The paper will examine these professionals, and their work facilitating tax avoidance, to understand individual agency in the construction of professional wrongdoing. Drawing on data from multiple sources—including original interviews conducted with 65 practitioners in 18 countries, along with news accounts and materials from the professional society—the study will develop a model of professional misconduct that links individual agency to the larger eco-system of social control agents and globalization. It will seek to expand the constructivist approach (Clemente and Gabbioneta, 2017; Palmer, 2012; Hopf, 1998) in order better to integrate the collective and individual levels of analysis in wrongdoing.

The analysis will show that individual professionals are not passive recipients of the social constructions of wrongdoing by organizations and social control agents. Instead, they can exercise agency in deciding for themselves, and acting upon their own understandings in everyday practice. This is not to downplay the power of collective actors to impose their claims on individuals, nor does it require a return to the “bad apples” theories of the past. Rather, the point is related to the phenomenon of “institutional entrepreneurs” (Greenwood and Suddaby, 2006), who respond to institutional logics by creating their own alternatives. Similarly, this paper asserts, professionals can independently construct their own understandings of wrongdoing and act upon them, within a larger framework dominated by collective actors. Analyzing how this occurs, and with what consequences, will be the purpose of this paper.

The remainder of the paper is arranged as follows. The literature review addresses the state of existing research, pointing up areas that have been neglected or undertheorized. The methods section offers a more detailed justification for the selection of wealth management as the empirical context of the study, and outlines the data sources and analytic techniques applied to them. The findings section presents the results of the analysis, and the discussion section proposes a model of professional wrongdoing on that basis. The final segment of the paper assesses the model’s potential contribution as well as its limitations and implications for future research.

## **LITERATURE REVIEW**

### *Wrongdoing in the professions*

Wrongdoing by professionals must be understood against the backdrop of a larger trend in professional services: tension between the logics of public service and private profit (Gabbioneta et al., 2014). Historically, professionals’ monopolistic practices and privileges of self-regulation have been justified by “the special importance of their work for society and the common weal” (Conze and Kocka, 1985: 18; see also, Barber, 1963). The professions were thought by early theorists to be motivated by “superior ethics, altruism and civic conscience” (Muzio et al., 2016).

But as the “client is king” ethos (Spence and Carter, 2014; Hanlon, 2004) has gained in importance for firms and individual careers, ambiguities have arisen for practitioners. These include uncertainty concerning “the legitimate substance of what it means to act in a ‘professional way’” (Schinkel & Noordegraf, 2011: 67), as well as around the notion of wrongdoing. What might be wrong for a “social trustee” (Brint, 1994) could be a common sense practice or a necessary step in career advancement for other contemporary practitioners (Carter and Spence, 2014). In financial and tax advisory services, for example, “‘bending the rules’ for personal gain is considered to be a sign of business acumen” (Sikka 2017: 3).

These uncertainties raise the question: who, or what, decides when professional wrongdoing has occurred? While some clear lines have been drawn around criminal activity in finance and taxation, the leeway in practice and self-governance that professionals enjoy mean that large “grey areas” of conduct have emerged (Jackson and Brammer, 2014). These grey areas expand in part because professionals give one another the benefit of the doubt when questions of conduct arise (Gabbioneta, et al., 2013). Such areas can best be characterized as ethically ambiguous or contested (Cooper, Dacin and Palmer, 2013), developing as they do under the “veneer of professional respectability” (Sikka and Wilmott, 2013: 419). They are also subject to change, so that the uncontroversial practices of yesterday can acquire the stamp of wrongdoing tomorrow (Barford and Holt, 2013).

In practice, this means that professional wrongdoing—especially when it does not clearly violate any laws—remains largely in the eye of the beholder. As the contemporary constructivist approach argues, “a behavior becomes a transgression only if it is perceived as such” (Clemente and Gabbioneta, 2017: 1). This is consistent with other research traditions, such as the sociology of deviance literature, which points to the importance of observers in labeling behavior (Erikson, 1964). A key concern of constructivist research is to explain why some behaviors are termed wrongdoing, while others—despite seeming to be closely related—are not. A common example is tax evasion

(which is illegal and clearly defined as wrongdoing) versus tax avoidance, which is legal and (until recently) viewed as sensible financial practice for individuals and firms (Scholes et al., 2008).

In such cases, which beholders matter? The individual professionals, their clients, the professional society, law- and policy-makers, the media and the public will all have their views (Clemente and Gabbioneta, 2017; Sikka 2007). One of the central issues for analysis is thus who or what is empowered to define transgressions (Cooper, Dacin and Palmer, 2013). In the constructivist view, key social control agents include the state and professional associations, who monitor and sanction practitioners through codes of ethics and disciplinary proceedings. They establish both what is illegal versus what is unethical, policing the political as well as moral boundaries of conduct. As this suggests, one of constructivist theory's biggest assets lies in its capacity to analyze ideas, norms and culture (Palmer, 2012; Hopf, 1998) as tools of this social control project, alongside the more conventional weapons of law and punishment.

But while constructivist theory acknowledges that wrongdoing is a multi-actor, multi-level phenomenon, the theory has little to say about individual agency. To the extent that constructivist theory engages with individual behavior, it usually does so in order to abstract to the organizational level (e.g., Greve, Palmer and Pozner, 2010). The role of the individual is better addressed in other domains of theory, including resource dependency (Palmer, 2012) and institutionalism—which acknowledge individual understanding of phenomena, alongside the regulatory and normative structures that surround the individual (Scott, 2001). For example, Greenwood and Suddaby's (2006) work on accountancy firms showed that even when institutions create established logics of action, there remains room for “institutional entrepreneurs” to develop and enact “alternative logics.” Similarly, Seo and Creed (2002: 236) have proposed a view of “social actors as active exploiters of institutional contradictions.”



In other words, individual agency has a role even within the highly determined institutional space surrounding professional conduct. Along the same lines, the sociology literature has developed models of individual deviance from social norms and social control structures. For example, the stream of work on “techniques of neutralization” (Sykes and Matza, 1957)—focusing on the rationalizations used by individuals engaged in deviant behaviors—has been extremely fruitful and continues to inspire new research (e.g., Fooks et al., 2013). Most importantly for this study, it has moved from the study of socially marginal individuals to research on professionals and “white collar crime” (Tillman and Indergaard, 2007). This literature acknowledges the significance of structural context, by examining how certain industries, institutions and organizations may be “criminogenic” (Vaughan, 2007). But these are treated analytically as opportunity structures, with the focus remaining on individual actors, and the ways they develop lines of action available to them.

This individual level of analysis is oriented toward developing models of future behavior. Individual rationalizations and understandings are important in this regard because, when “the individual is free to engage in delinquency without serious damage to his self-image” (Sykes and Matza, 1957: 667), he or she is likely to continue that misconduct. In other words, the sociological line of research focuses analytical attention on the understandings that normalize wrongdoing and render it acceptable to the individual actor, if not to social control agents. For example, in a study of professionals serving prison time for marketing fraud, Shover, Coffey and Sanders (2004) showed how perpetrators defy social control agents by defining themselves as champions of “free enterprise,” and their acts as normal, even praiseworthy, commercial behavior. Far from accepting that they had committed a criminal offense, these individuals viewed their actions as “enhancing the[ir]...positive definition of self” (2004: 72); this led to many of them being denied parole, on the grounds that their understanding of their actions made it likely that they would re-offend.

Analyzing individual understandings and rationalization of misconduct can provide a measure of predictive power, which research on wrongdoing in the professions has long sought (Palmer, 2012).

In keeping with this, the present study seeks to link these sociological and institutionalist insights on the individual wrongdoer to the constructivist tradition focused on audiences and organizational/institutional definitions of wrongdoing. Thus, the paper will integrate individual and collective levels of analysis, to develop a model of agency within a structure of social control.

### *Contextual factors in professional wrongdoing*

Just as certain industries may be considered “criminogenic” (Tillman and Indergaard 2007), previous research has identified several influences in the environment of professional action that may increase the incidence of wrongdoing. These include globalization of professional practice, and the role of states. Wrongdoing thrives on the complexity and geographical dispersion of globalized work. To a surprising extent, states undermine their role as social control agents by promoting—implicitly or explicitly—the wrongdoing they may publicly condemn.

**Globalization.** Globalization weakens oversight of professionals and generates uncertainty about the boundaries of wrongdoing. As professional work is increasingly conducted across national borders, legal frameworks and social expectations vary; this makes globalization “an increasingly significant risk factor in professional misconduct” (Muzio et al., 2016; Faulconbridge and Muzio, 2012). To the extent that professions have become “global enterprises with networks and operations in hundreds of countries” (Sikka, 2007: 399), they have begun to outgrow the monitoring and sanctioning structures erected by states and professional societies (Gabbioneta et al., 2014). This was among the contributing factors to the global financial crisis that began in 2008 (Malliaris, Shaw and Shefrin, 2016).

The connection between globalization and professional wrongdoing is not just a matter of uncertainty or “double deontology” (Etherington and Lee, 2007). Globalization can also provide cover for *deliberate* obfuscation by professionals (Levin, 2003). For example, the multi-national tax avoidance schemes created by some professionals generally “rely on complexity, secrecy and

compartmentalizing information so that advisers can claim that they had no idea the overall transaction was a fraud” (Johnston, 2006).

The essential structural conditions for this complexity, secrecy and compartmentalization are provided by the system of far-flung “microstates” known as the offshore financial system (Sikka, 2007). The patchwork of conflicting laws among these countries are strategically exploited by professionals wishing to conceal wrongdoing. The professionals themselves are often involved in designing the legal conflicts and gaps from which they benefit, by acting as advisers in the legislative process (Hofri, 2014; Winters, 2011).

The international system of tax havens collectively form “the cornerstone of the process of globalization” (Palan et al. 1996: 180). Their wide geographical distribution has served for decades as a highly effective barrier to monitoring and sanctioning of professional conduct (Palan, Murphy and Chavagneux, 2010). Professionals using this global network are rarely sanctioned because of the extreme difficulty in proving wrongdoing across multiple locations far distant from one another: while possible in theory, the exorbitant costs of gathering evidence from distant and hard-to-reach locales, or gaining the cooperation of authorities in those jurisdictions to build a case, means that most cases are dropped or not taken up at all (author).

Thus, for some professionals, the highly geographically distributed nature of their work creates opportunities for misconduct with little chance of detection or deterrence. This serves to “put them beyond the reach of effective national regulation” (Flood, 2011: 510). To a surprising extent in the age of easy jet travel and internet connectivity, geography matters in professional wrongdoing.

**States.** Professionals have sought to further increase the barriers to monitoring and sanctioning of their behavior through active intervention in regulatory and legislative processes. To a large extent, states have cooperated with this agenda, both onshore and offshore. Key objectives of this intervention have been: 1) reducing transparency and information-sharing with other countries; and

2) expanding the “grey areas” of professional conduct so that what might be illegal and “morally repugnant” onshore is made legal and commonplace offshore (Urry, 2014: 44; also Winters, 2011). Tactics used to achieve these aims have included: a) “playing-off one nation state against another” (Sikka, 2007: 398) by promoting complexity and conflicts of laws among jurisdictions; and b) lobbying for, writing and enforcing the professional standards and laws that govern their own behavior (Sikka and Wilmott, 2013).

In this sense, globalization has not rendered the state and state-based organizations (like professional societies) superfluous, as some had predicted (Robinson, 2001). Instead, recent decades have seen the state weakened in its ability to regulate and constrain professionals, while the state system itself—particularly the state’s ability to enact sovereign law—has increased in importance within a context of globalization. As a result, states have grown more dependent on professionals to take on governance roles. Professionals are called upon both to regulate their increasingly complex and geographically-distributed practice, and to help states compete with one another in a global economy (Sikka, 2007; Mitchell et al., 2002).

State dependence upon professionals in advisory and governance roles has served to normalize practices like tax avoidance, embedding them in national economies. In what Sikka and Wilmott (2013: 436) have called a “conspiracy of elites,” actions that might otherwise be labeled as wrongdoing by social control agents are protected and nurtured by “the cosy and mutually advantageous relationships fostered between senior partners of the big firms, politicians and civil servants” (2013: 418). This includes inviting professionals like wealth managers and tax lawyers to advise and lobby legislators, and sometimes even draft tax laws themselves (Hofri, 2014; Riegels, 2014). One consequence is the establishment of purposefully confusing tax laws that keep business flowing toward the professionals: their “vested interest in the overall complexities and uncertainties of the tax system” results in them being empowered “to transform matters of questionable legality

into murky disputes of interpretation” (Winters, 2011: 222-223). This consolidates professionals’ political and economic power, while eroding or redirecting that of social control agents.

Remarkably, this extends to instituting laws in which states discourage or punish professionals for blowing the whistle on wrongdoing. For example, some jurisdictions, like Switzerland and Panama, make it a criminal offense to disclose confidential client information unless required by court order; these sanctions are usually backed by penalties from the local professional society (Parkinson, 2004). In effect, this ensures that professionals rarely come forward with evidence that their clients are engaged in illegal activity, much less suspicions of wrongdoing (Silverstein, 2014). This *de facto* protection of tax avoidance in some states is all the more noteworthy given that states have historically been viewed as constituted in large part by their tax collections (Steinmo, 2002). To abandon that in favor of professional activity that undermines the fiscal basis of the state represents a significant realignment of political activity under globalization (Sikka, 2007).

#### *Unresolved questions*

Given the way globalization facilitates professional misconduct, and given the weakening of states and professional societies as social control agents, wrongdoing seems almost inevitable. And yet some individual professionals resist, holding to a notion of conduct that may in some cases be practically unenforceable. How do such individuals develop their understandings and lines of action within an ecology that has largely normalized practices such as tax avoidance? Why do they risk contesting the judgements of social control agents?

At the extreme, we have examples such as whistleblowers, who have played a particularly important role in exposing legal-but-unethical professional activity, particularly in the realm of tax avoidance (Obermayer and Obermaier, 2016). For example, the whistleblower behind the Panama Papers leak was particularly explicit in rejecting the judgements both of states and professional societies. The leaker, known by the pseudonym John Doe, published an “excoriating” condemnation of the

professionals involved in tax avoidance, concluding that “What is allowed is indeed scandalous and must be changed” (Harding, 2016b). Such whistleblowers often pay with their careers and their personal lives for the sake of “doing the right thing”—adhering to a code of professional conduct that puts the common good above personal interests. Yet this is the very standard of social trusteeship (Brint, 1994) which has traditionally justified the privileges of professionals.

In an environment where professionals may not hold each other accountable (Gabbioneta et al., 2013) and states compete to lower regulatory standards, it is remarkable to find individual professionals putting so much at stake. This underscores the need to model professional conduct in a way that both acknowledges the social construction of wrongdoing and the agency of individuals to develop their own lines of action. The following sections of the paper address this issue by examining professionals’ responses to the ethical issues raised by tax avoidance.

## **METHOD**

To examine wrongdoing and agency within an environment of social control and globalization, this study focuses on the profession of wealth management. These practitioners facilitate tax avoidance “on an industrial scale” (Harding, 2016a), making them the central actors in one of the most highly contested and empirically significant domains of professional misconduct today (Cooper, Dacin and Palmer, 2013). Moreover, as one recent study put it, wealth management is “global in its spread and integration” (Winters, 2011: 219), making it an analytically interesting case for studying the relationship between professional wrongdoing and globalization. Whereas the Big 4 accounting firms, and some law firms, specialize in tax avoidance for firms (Sikka and Wilmott, 2013), wealth managers serve private individuals. In this role, they are responsible for the US\$200 billion in annual underpayment of tax by the world’s wealthiest people (Zucman, 2015): a client base consisting of the 15.4 million individuals with US\$1 million or more in net worth (Cap-Gemini, 2016).

Use of a case study such as this is particularly appropriate when a phenomenon is poorly understood; the method “enables the generation of novel theory because theory building does not require *a priori* assumptions or hypotheses” (Gabbioneta et al., 2013: 487). Certainly, tax avoidance as a global practice is poorly understood; it relies on secrecy and obfuscation (Johnston, 2006), allowing it to thrive with little restraint from social control agents (Winters, 2011; Levin, 2003). But it, along with the profession of wealth management, acquired much greater public and scholarly interest following the Panama Papers leak of 2016. This study addresses calls to delve deeper into the revelations (Weisbord, 2016) and what they mean for professionals privileged with public trust (Trayner, 2017).

#### *Data sources*

The four data sources used in this study are summarized in Table 1, which also shows how each data source was applied in the analysis. The data range from 2007 through 2016, which includes the Panama Papers leak and responses to it by the public and the professional society. The primary data source was interviews, conducted with 65 practicing wealth managers in 18 countries. These interviews, on which more detail is provided below, formed the basis for answering this paper’s central research questions about professional agency and wrongdoing.

**Table 1: Data sources**

Data source	Description	Level of analysis	Use in theory development
Interviews	* Interviews with 65 wealth managers in 18 countries.	Individual	Analysis of individual professionals' understandings of wrongdoing in relation to tax avoidance
Internal statements and documents of the professional society	* Remarks by officers of STEP—the primary professional society for wealth managers—at annual and regional meetings open only to members. * Textbooks from the credentialing courses for wealth managers, available only to members.	Collective: intra-professional	Develop understanding of the collective intra-professional discourse around wrongdoing through tax avoidance.
Public documents from the professional society	* Monthly magazine published by the professional society, available online. * Public policy statements, available to all.	Collective: public-facing	Analyze the formal, public response by the profession to perceptions of tax avoidance wrongdoing.
Newspaper articles	* Articles English-language press in Europe and North America , 2000-2016	Collective: policy and the state	Assess policy-makers views and actions in connection with wealth management and tax avoidance

Another source of data was statements and documents produced by the dominant professional society for wealth management worldwide: STEP, the London-based Society for Trust and Estate Practitioners, which represents 20,000 professionals in 95 countries. The data included statements by leaders of the association at closed professional society meetings, as well as internal documents, such as training manuals for the organization's credentialing program for wealth managers. In addition, I looked at statements and documents produced by STEP for public consumption, such as the monthly magazine and public policy statements on issues of taxation. Both shed light on the construction of wrongdoing by a major social control agent. The internal statements and documents revealed the professional association in conversation with itself, as it constructed its own norms for practitioner behavior, while the public ones illustrated attempts to influence public perception of practitioners



and tax avoidance. Together, they illuminate how the profession has sought to exert social control, both over its members and the larger social process of constructing wrongdoing.

Finally, I analyzed articles from the English language press about the wealth management industry and its connection to tax avoidance. Using the Factiva database, I surveyed articles from the English-language press in Europe and North America between 1 January 2000 and 31 December 2016. The articles provided valuable context for this study by illustrating the construction of tax avoidance as a form of wrongdoing, as that view unfolded over time. Of the 576 articles, most (302) dated from after the Panama Papers leak of April 2016 and featured Mossack Fonseca—the firm exposed by the leak. This suggests the recent momentum of change in public perceptions of tax avoidance and the wealth management profession.

**Interview data.** The interviews that form the primary data source for this paper were part of a larger study that included several years of participant observation; due to space limitations, the observational data are not reported here. But as context for the interviews, it is relevant to note that the participant observation consisted of enrolling in and completing the professional certification program in wealth management. The practicing wealth managers I interviewed were either fellow participants in the professional certification courses I took, fellow attendees at the professional society meetings I attended once I attained the wealth management credential, or fellow members of the professional society STEP. In the first two cases, I recruited participants face to face; in the latter case, I recruited via email and phone. The wealth managers who participated knew my real name and institutional affiliation, and gave their consent to participate in my research project on condition of anonymity.

Although I never practiced as a wealth manager, immersion in that field was necessary to overcome the considerable barriers to access. Wealth managers' commitments to fiduciary discretion

(Marcus, 1983) requires them to maintain strict privacy around their clients' wealth and the means used to preserve it. As a result, the professionals themselves have tended to keep a low profile publicly, and to reject cooperating with researchers or journalists. Their inward-facing tendencies have been accentuated in recent years by the perception that the profession is under attack by entities such as the OECD, which has portrayed wealth managers as agents of money laundering and tax evasion (Sharman, 2006). These public characterizations have generated considerable resentment and suspicion of outsiders among some professionals, such that direct interview requests from social scientists are rarely met with a positive response. Due to the unusual levels of secrecy and distrust surrounding wealth management, it would have been difficult to study practitioners other than by immersion (van Maanen, 1973).

The interview sites included many of the most significant financial centers in the world: Switzerland, Liechtenstein, Hong Kong, Singapore, Mauritius, and the following British Crown Dependencies and Overseas Territories: Guernsey, Jersey, the British Virgin Islands, and the Cayman Islands. Some interviews were also conducted in the newer, up-and-coming financial centers, particularly those serving the growing wealth in Asia, such as the Seychelles. This was also done to capture global variations in the construction of professional wrongdoing. The practice of wealth management, including wrongdoing, differs according to client demands in different world regions.

None of the participants consented to be taped during the interviews, so responses were recorded by the researcher typing on a laptop, at the rate of approximately 75 words per minute. Interviews typically lasted 90 minutes, with a range of 30 minutes to over three hours. Questions focused on challenges and dilemmas of providing client service—a general line of questioning that did not explicitly touch on tax avoidance, but which frequently brought forth data on that subject. The interview participants were diverse, representing 19 nationalities, and ranging in age from late 20s to late 60s. As in other domains of elite professional service, however, there was little diversity in

gender or race (Cook, Faulconbridge & Muzio, 2012). The majority of participants—71 percent—were male, and 70 percent were white.

### *Data analysis*

The analytical process took place in four steps. Step 1 involved bringing together each practitioner's account of his or her involvement in tax avoidance, to create a highly detailed, textured account of the individual professional within a larger system of client relations, social control agents, and globalized work. These data shed light on several key issues, including the ways that professional wealth managers understand their work, based on public input combined with their own experiences with clients. The analysis was particularly sensitive to the ways wealth managers used the understanding they developed as guidance for their own (in)action.

Step 2 in the analysis was examination of the external influences on wealth managers' understanding of tax avoidance. This included use of the newspaper articles, which traced developments at the state level, such as policy-makers' public statements and the passage of laws that might reshape the boundaries of legality. The newspaper articles also shed light on the role of globalization, by documenting the coordination and conflict among different states with regard to tax avoidance. Examination of statements and documents produced by the professional society STEP were also part of Step 2. This included analysis of the intra-professional discourse on tax avoidance, to understand how wealth managers explained the negative moral valence of the practice among themselves. This part of the analysis relied on two data sources: speeches given at professional society meetings open only to practitioners; and the training manuals used in the credentialing course for wealth managers, offered by the professional society and resulting in a certification that has become the global standard. Next, I looked at STEP's public statements on tax avoidance, which consisted of the professional society's monthly magazine, and its public policy statements; together, they provided

insight into efforts by the professional to influence public perception of wrongdoing in relation to tax avoidance.

In step 3, I used process coding (Saldaña, 2015) to organize the materials from steps 1 and 2 into first-order codes. These were then grouped into second-order themes, from which I developed aggregate dimensions. Table 2 illustrates the relationship among these parts of the analysis, using examples.

**Table 2: Examples of data coding**

Second order themes	Aggregate dimension: Rejection of wrongdoing
<i>Ideology ("tax is theft")</i>	"There are rapacious governments. We all believe in taxes in civilized society; they provide essential services. But it is theft by another word. When taxes get ridiculous, as they do at times, the tax avoidance industry arises" (Dubai 1).
	"Social democracy is creating too big demands on the wealth creators. That must be obvious to you in academia. You can't get voted in now unless you support massive entitlement programs, because too many people receive them. With the result that governments now need an ever- increasing share of GDP from the producers to fulfill their promises. So naturally the wealth creators, like squirrels collecting their nuts, are scaling back; they're saying to themselves that they don't want to collect as many nuts next year, because the government just takes them away. . . It's nature, people don't like the fruits of their labors taken away so arbitrarily. The squirrel says, 'You know what, I did pretty well last year and stashed all my nuts in that tree, but the government knows where I live and took them all away. So I'm going to bury them in the woods where no one will find them'" (London 1).
	"Onerously high, some may say unethical, tax demands to finance generous government spending clearly act as a chill upon the entrepreneur as a creator of wealth; whereas, on the other hand, the poor may then be caught in the poverty trap and rely on state welfare handouts rather than engage in productive work" (TEP credential course manual; Parkinson and Jones, 2008: 267).
<i>Practical benefits (economic development)</i>	"What so many people don't understand is that tax avoidance frees up investment capital. Without our profession, there wouldn't be the large pools of capital available to fuel economic development. So many of us, if not all, see our work as primarily about helping people—not just our clients, but more generally by helping maintain capital flows for investment and economic growth" (Hong Kong 3).
	"There is such a negative image of wealth management and tax avoidance offshore, but I don't really see why. If you're looking at making an investment in an emerging market, which is high-risk by definition, you need to make sure you're getting the best return. What offshore structures allow people to do is optimize the tax so that they do get a better return. The investee country gets a good flow of FDI [foreign direct investment]; perhaps if there weren't the benefits of the tax mitigation opportunities, people might not even invest there" (Mauritius 2).

	<p>“Wealth can move around, and go where it’s taxed lowest...There’s been a lot of tax evasion; that’s illegal, and we’ve never dabbled in that—knowingly. But tax avoidance is perfectly legal, and it’s the duty of corporate officers to minimize taxes. We use that to create economic growth” (Guernsey 1).</p>
	<p><b>Aggregate dimension: Acceptance of wrongdoing</b></p>
<p><i>Passivity (bad society/state/clients)</i></p>	<p>“Suddenly, we’re more conscious of the inequalities of the world. And the most unequal societies in the world, according to the OECD, are in Latin America. And part of that is people not paying their taxes. We are an immoral society...So I can understand how people outside the industry think of what we do as evil and Machiavellian” (Panama 2).</p>
	<p>“With all the mobility going on in the world, international marriages, governments can’t keep up with people. There are so many places in the world where I can help you live without paying tax. A lot of these bright ideas from tax officials and governments are outdated, based on a world that is not very mobile; and that becomes a vicious circle because the tax burden then increases on the people who are <i>not</i> mobile, and they get resentful and try to think up ways to avoid their taxes” (Dubai, 3).</p>
	<p>“I’ve told my colleagues, ‘if I ever become like some of our clients, shoot me.’ Because they are really immoral people—their tax avoidance habit is the least of it... they pay no tax so they can have all the money they want, but they have too much time on their hands, and all the money means they have no limits. I was actually told by one client not to bring my wife on a trip to Monaco unless I wanted to see her get hit on by 10 guys. The local sport, he said, was picking up each other’s wives” (Geneva 2).</p>
<p><i>Activism</i></p>	<p>“It’s the lack of tax paying here [offshore] that is contributing to society falling apart, so I encourage clients to make lots of charitable contributions, because that’s what creates the safety net” (Cayman Islands 1).</p>
	<p>“I talk about poverty in my presentations to clients, and people say, ‘Are you a communist or something?’ I’m helping them avoid a lot of tax, okay, maybe millions a year—that’s how I get their attention. But then I use my position to educate them. When I talk about Panama, I acknowledge that our economy is booming, but also that 25 to 30 percent of our people live in poverty. I talk to people about Amartya Sen and Joseph Stiglitz. A lot of people think that’s weird for someone working in the deepest part of capitalism” (Panama 4).</p>
	<p>“...the big picture issue you come up against is that extremely wealthy people are able to structure their affairs in such a way that they are able to pay much less tax than they would if my work and my industry didn’t exist. The way I rationalize this to myself is that you have to do this to survive in the industry; if I didn’t do this, someone else (like a competitor) would do it...But I’ve been in positions where we had to report clients to the authorities for tax fraud” (Jersey 1).</p>

In step 4, I brought together the individual and collective level data into a provisional model of professional wrongdoing. The model seeks to account for the role of individual agency, including variation in wealth managers’ understanding of tax avoidance and the actions they make take in response. Built into the model is the framework of opportunities and constraints that arise from social control agents (mainly the state and the professional society) and the context of globalization. The

process of theory-building was iterative, moving back and forth among the data, the literature and emergent patterns in the findings.

While qualitative research involves an irreducible element of subjectivity, several aspects of the research process lend confidence to the interpretations presented here. First, the study is based on “prolonged engagement” (Creswell and Miller, 2010), suggesting the validity of the analysis; in this case, the engagement lasted nearly a decade, and included training to join the profession. Second, the emerging insights during the analytical process were validated by “member checks” (Cho and Trent, 2006) by current wealth management practitioners, including representatives of STEP and its training program.

### *The wealth management profession*

Wealth management is an elite profession specializing in protecting the fortunes high- and ultra-high-net-worth individuals, largely through the creation of tax avoidance schemes (Winters, 2011). The legality of this work is dependent upon the global web of offshore financial centers, so the norm within the profession is the development and implementation of cross-national legal structures. This practice requires technical skills in multiple domains, so that practitioners must be “part lawyer, part tax adviser, part accountant and part investment adviser all rolled into one” (Parkinson, 2008: 20).

In many cases, wealth managers are not just “social trustees” (Brint, 1994), like other elite professionals, but also literal trustees. That is, they commonly serve their clients by creating and managing trusts (author) as components of cross-national tax avoidance structures. Historically, this role was closely connected with philanthropy and civic governance: if the professional could be trusted to manage the affairs of the wealthiest people in society, it was assumed they could also be trusted to look after the public good (Hall, 1973; Marcus and Hall, 1992). Thus, wealth managers have a complex relationship with the ethic of selfless public service that has traditionally undergirded the privileges accorded to professionals.

Perhaps the most distinctive feature of wealth management, from the point of view of professional wrongdoing, is its intense commitment to secrecy; this is partly at the insistence of ultra-wealthy private clients, and partly due to the nature of tax avoidance schemes, which succeed as a result of discretion and unobtrusiveness (Winters, 2011; Johnston, 2006). Thus to a degree far beyond other professions, wealth management practitioners and firms simply do not speak out, even when their reputations are at stake. This is quite different from allied professions, such as accountancy, in which firms such as PricewaterhouseCoopers have been very active and vocal in defending themselves against accusations of wrongdoing by social control agents such as the state and the media (Sikka and Wilmott, 2013). Such firms, and their corporate clients, are already highly visible, and have much to gain from protecting their reputations.

In contrast, engaging in public discourse or otherwise being publicly visible diminishes the reputation and trustworthiness of wealth managers. Most boutique wealth management firms do not advertise or accept clients who approach them directly, choosing instead to take on clients only by referral; once accepted as clients, those firms take care that professionals are never seen publicly with clients, to avoid any link between the two. For larger firms, such as multi-national banks with a wealth management division, taking a stand on wrongdoing could not only impact their wealth management business in a negative way, but have detrimental effects on the firms' other businesses. Thus, as one Hong Kong based practitioner interviewed for this study put it,

“We have, by the nature of our work, cultivated privacy and discretion, so the profession is totally unprepared to respond to the claims being made about us and about the industry....we cannot win publicly, let's face it” (Hong Kong 2).

A report in the *Economist* (2012) described the wealth management profession as “tight-lipped,” adding that “Bad publicity makes many in the industry gun-shy.” This reticence and attempt to disappear from public view are crucial to the secrecy ethos: one London-based wealth management

firm sums this up in its motto, “I want to be invisible” (Leigh, Frayman and Ball, 2012). This is equally true of boutique firms and the wealth management divisions within large international banks like HSBC, UBS, and Deutsche Bank: while those organizations have huge advertising and marketing budgets to promote most of their offerings, they “do not openly advertise advisory services for ‘tax shelters’” and other key wealth management services (Goodman, 2016).

As a result, wealth management firms are intentionally absent as social control agents in social construction of professional wrongdoing where tax avoidance is concerned. Their reasons vary, but the result is consistent: near-complete silence is the norm. That leaves the professional society to represent wealth managers among the agents of social control—and even that organization has targeted its appeals to a limited audience of policy-makers and practitioners, largely ignoring the media and the public at large. For the most part, the professional society’s message to practitioners about tax is simply: don’t do anything illegal (Halpern, 2016; STEP, 2016). This leaves a large “grey area” of professional conduct undefined.

## **FINDINGS**

When it comes to tax avoidance, the absence of firms from the social control process and the light touch of the professional society mean that individual wealth managers are largely on their own. Beyond staying within the bounds of the law, it is left to them to decide what professional wrongdoing means, and how to develop their lines of action in light of that understanding. Of course, they are aware of the public discourse on tax avoidance, particularly from social control agents such as lawmakers. In the UK, Parliamentarians have portrayed wealth managers as “completely and utterly and totally immoral” (Syal, 2012), for “perverting the spirit of the law to ensure that tax is avoided” (House of Lords, 2011, Column 375). In the US, a former investigator for the Senate described wealth managers as “really bad people” who gather at professional society meetings “to learn how to become even worse people” (Silverstein, 2014). And those are comments made prior to



the Panama Papers leak, when “tax shaming” (Barford and Holt, 2013)—the condemnation of those who legally avoid paying their fair share of tax—was still in its early stages.

Awareness of being publicly condemned as wrongdoers came up frequently and unprompted during my interviews with wealth managers. For example, a practitioner in Switzerland answered my request to describe his work by saying (with a laugh) that he was involved in “what governments define as immoral tax planning” (Zurich 1). A wealth manager in Panama answered the same question by saying: “I understand that I’m involved in an industry involved in hiding assets that should be subject to tax, and because of that, people are suffering, and it’s just terrible” (Panama 3). A practitioner in the British Virgin Islands got all the way to the end of our interview and then, when I thought we were done, surprised me by expounding for some minutes on his resentment that the profession and its clients had been “vilified” as “immoral for not paying as much tax as some people think they should” (BVI 1).

Simultaneous with this awareness that *others* viewed them as wrongdoers, the professionals interviewed for this study retained the ability to self-evaluate differently. The analytical process revealed that, even as they assimilated the views of social control agents, practitioners continued to develop independent understandings of tax avoidance, and to act accordingly. In the aggregate, the data suggested four orientations to tax avoidance, only two of which mirrored the constructions created by social control agents—in this case, the state and the professional society. The others appeared to be *sui generis*, arising from the practical experiences of the professionals. These four orientations are reviewed in detail below, and have been clustered analytically into two groups, based on whether they reject or accept the notion that tax avoidance constitutes professional wrongdoing.

### *Rejection of wrongdoing*

**Ideological commitments.** A slim majority of wealth managers interviewed for this study rejected the notion that facilitation of tax avoidance is a form of professional misconduct. Of those, most took

the view that taxation is theft from the “wealth creators” of the world; this is grounded in a long-standing libertarian ideological tradition (Feser, 2000) that is also promulgated by STEP. Its training manuals for the wealth management credentialing program—to gain the certificate now accepted as the global standard in the profession (author)—contain multiple ideological commentaries on tax as “punitive” and illegitimate (Parkinson, 2004: 125).

In fact, the professional society turns the tables on states by painting *them* as immoral actors. For example, STEP links taxation of the rich to moral hazard and immiseration for the poor, arguing that when “wealth creators” are taxed “all this does is reduce the money available for investment. The result is that economic growth slows and everyone loses. The rich get poorer and the poor become destitute” (Parkinson and Jones, 2008: 267). On this point, the two social control agents—the state and professional society—are most clearly in direct contradiction to one another.

As the examples in Table 2 indicate, some individual practitioners share the views of the professional society. They see tax avoidance as an ideological cause, on which they have taken the morally correct side: the defense of capitalism, personal initiative and free market forces. As one practitioner in Buenos Aires put it, referring to income tax rates of 35% in some parts of Latin America, “My clients want to get their money out of their countries because they don’t want to be robbed by their governments. Brutal confiscation!” (Argentina 1). This perspective explicitly defies the characterization of wealth managers as villains, instead casting them as heroic figures—defenders of fairness and justice.

**Practical benefits.** For a subgroup of those who rejected the idea of tax avoidance as wrongdoing, the issue was not ideology but practicality. They offered a novel defense of the practice: one not mentioned by the professional society. It consisted of an interpretation of tax avoidance as an international development tool, one that had brought enormous benefits to poorer regions of the

world. This understanding was prominent in the discourse of practitioners working in developing countries, particularly those who were native-born people of color.

For example, a Chinese wealth manager explained that for his country, “what you call ‘tax avoidance’ is just a development strategy for countries whose institutions are too weak and inefficient to promote economic growth” (China 2). By helping high-net-worth Chinese families get wealth offshore, to be invested in African natural resources or the New York Stock Exchange, he continued, “we provide an efficient workaround so that our country can develop economically while our institutions catch up; we don’t want to wait generations for our economy and political system to mature while the world passes us by” (China 2). Without using the words of scholarly discourse, this practitioner essentially argued for a constructivist view of tax avoidance, underscoring contestation.

Similarly, a native Mauritian wealth manager criticized the “hypocrisy” of onshore “tax shamers.” Many of them—and here he named institutions such as Agence France de Développement and the World Bank—use Mauritius as the hub for the development funds they channel to India and Africa, benefitting from the island’s reliable rule of law and European-style institutions. Most important is what he called “the huge tax-favored status,” which allow capital gains to be taxed at a special 3% rate if the funds originate in Mauritius; this compares to the 18% rate in India. “Out of every dollar that has gone into India,” he said, “about 43 cents has passed through Mauritius for tax savings. Without us, maybe India wouldn’t have gotten the investment it has gotten in the last ten years” (Mauritius 3).

This view of tax avoidance constituted an innovation in the sense of partly adopting the stance of the professional society (“tax avoidance is not wrongdoing”) but grafting onto it a novel rationale. Instead of grounding themselves in an ideological commitment, these practitioners appealed to pragmatism. If it helps countries develop economically, how could tax avoidance be wrong?

### *Acceptance of wrongdoing*

**Passivity and deflection.** Of those practitioners who accepted the notion that tax avoidance was ethically and morally wrong, most of them exhibited a kind of “passive nihilism” (Diken, 2009)—resignation in the face of “bad” clients, politics and social values. While expressing a view of tax avoidance as negative and even shameful, this understanding absolved the practitioners of personal responsibility. In effect, they had developed the elite professional version of the classic “I blame society” defense offered by juvenile delinquents for their own wrongdoing (Traber, 2007).

For example, one English practitioner in Hong Kong touched upon tax avoidance as part of his practice, but framed the issue as part of a government failure. The Chinese state, he said, was “not into taxing wealthy people” (Hong Kong 2). While everyone is technically subject to tax on their income, he added, the reality is quite different: “Middle class people pay taxes here, wealthy people don’t pay any at all.” In his account, tax avoidance simply happened without agency or intervention by any individual; it was resulted from the state’s lack of interest or initiative vis-à-vis collection. This practitioner offered no critique of this, and no reflection on his own role—or that of his profession—in making this tax avoidance by the wealthy possible.

This pattern was repeated with variations in terms of where responsibility was deflected. As the quotes in Table 2 indicate, if wealth managers weren’t blaming the government, they blamed clients or—literally—“an immoral society.” One practitioner in Singapore actually quoted a well-known passage from the New Testament (“the poor you will always have with you”) as way to shrug off the growing global economic inequality that he agreed was the likely result of tax avoidance by his wealthy clients. The implication was: this is how the world has always been, so don’t blame me.

Those who put the onus of wrongdoing on clients were typically a bit more colorful and animated in their denunciations of the clients’ moral turpitude. Like the Geneva-based wealth manager (quoted in Table 2) who said he had told his colleagues to “shoot me” if he ever become as corrupt as his

clients, a wealth manager in Cape Town underscored his clients' moral derangement by stating that many "believe that they are descended from the Pharoahs, and that they were destined to inherit the earth" (South Africa 1). The shock value of such stories seemed to serve as a diversion, to take focus off the wealth manager's ethics and put it onto the client.

This group of practitioners thus expressed an ambivalent acceptance that they were participating in wrongdoing. In this, they rejected the view of one social control agent (the professional society) while only partially accepting the view of another (the state). So while they acknowledged the view of the state that tax avoidance was wrong, they elided their own role in making it possible. At best, they conceded that they might be tainted by association, but they showed no indication of trying to stop or mitigate the practice in any way.

**Active engagement.** Finally, the smallest group of practitioners interviewed in the study consisted of those who accepted that tax avoidance was wrong *and* took personal responsibility to undo the damage. In relation to the construction of professional wrongdoing, they internalized one set of social judgments about tax avoidance—that created by the state—and rejected the other (that of the professional society). They viewed themselves as complicit in an immoral or unethical activity, and developed strategies to counteract the damage.

None of the 65 people interviewed for the study said they had considered leaving the profession, although one practitioner said he had reported clients to the authorities on suspicion of tax fraud (see Table 2)—a move that could have cost him his career (Silverstein, 2014; Parkinson, 2004). One woman, who had been employed by Greenpeace before entering the wealth management profession, said that she had risked her job by refusing to facilitate tax avoidance schemes requested by clients: "Sometimes, I have had to say 'I won't sign off on that document because I find it unethical'" (Zurich 2). Since she is married to the son of the firm's CEO, she has kept her position so far. But

she was not sure that would always be the case, because the clients believe they “are people above nationality and laws...it’s potentially very dangerous.”

As for others who felt personally responsible for countering the damage done by tax avoidance, they justified remaining in the profession for the privileged access it gave them to their multi-millionaire and billionaire clients. Several said it gave them an opportunity to change clients’ minds by educating them about inequality, or to steer them toward large charitable contributions that might ameliorate the damage done by their tax avoidance (see Table 2). One practitioner in Guernsey said he purposefully played to the vanity of many of his clients, urging them to “see their name up on a building” in order to encourage philanthropy: “They don’t want to give their money to the government through paying tax, so I get them to develop some pet projects they like to fund, and the rewards they get from that are largely ego-driven...but society benefits” (Guernsey 3).

### *Contextual factors*

These individual understandings of tax avoidance arise in a context of social control agents and globalization. The following sections detail the role of each contextual factor in shaping individuals’ lines of action, toward or away from wrongdoing.

**The role of the professional society.** Both publicly and within the profession, STEP has created conditions conducive to further wrongdoing by its practitioners—at least where tax avoidance is concerned. This has occurred in two ways. First, STEP has made a concerted effort lasting over a decade to delegitimize taxation and critics of tax avoidance; this includes both the training manuals quoted above and the public statements of the association (see Appendix). Second, its code of conduct has created a “veneer of professional respectability” (Sikka and Wilmott, 2013: 419) without providing ethical guidance; like the training manuals, the code’s content makes clear that legal boundaries are the only ones that matter (see Appendix). This reinforces the practitioners who deny

that tax avoidance constitutes professional wrongdoing; it also fails to provide any direction for those who believe tax avoidance is wrong, leaving many of them to sink into “passive nihilism.”

Beyond casting doubt on the legitimacy of tax and criticisms of tax avoidance, STEP’s abdication of an ethical position leaves practitioners largely on their own to decide what constitutes wrongdoing.

To see why this is a problem, consider this remark from a wealth manager in the Cayman Islands:

“You’ve got to totally be able to suspend your own personal sense of ethics in this work ...It’s not that you have any doubts about the legality of what they’ve [the clients] done—a lot of things are legal in different parts of the world—but I think you just have a code of ethics as a professional, and you give professional advice, setting aside whatever you might think about that” (Cayman Islands 2).

This raises the question: where do practitioners like this get “a code of ethics as a professional” if it is not coming from the professional society? While this individual distinguished his own personal ethics from his professional code, the only guidance available from STEP amounts to “stay within the law.” This foregrounds the importance of examining individual agency in understanding and acting upon notions of professional wrongdoing.

**The role of the state.** As recent work has shown, the state’s role as a social control agent vis-à-vis professionals is ambivalent at best (Sikka and Wilmott, 2013). On the one hand, states are expected to act on behalf of the public interest, and can be held accountable for their performance in this regard by voters. But at the same time, states and professional societies are in many respects aligned in ways that intentionally blur the boundaries around legality and wrongdoing. This makes social control by states highly contested, and weakens states’ power to monitor and sanction professional wrongdoing. This is most visible in the case of global scandals such as the Panama Papers, which has as yet yielded no arrests or prosecutions, even a year after the revelations of widespread wrongdoing.

Although modern states are defined in large part by their ability to extract tax revenues (Burke, 1790; Schumpeter 1918; Goldstone, 1991; Genschel, 2005), they are also increasingly dependent upon the professionals who specialize in tax avoidance (Hofri, 2014; Sikka, 2007). For many states, tax avoidance is a source of political and economic destabilization (Saviano, 2012). At the same time, due to the increasing complexity of taxation in a world of high-mobility capital and people, the public sector generally lacks the knowledge needed to govern experts and their practices. Thus, professionals like wealth managers end up in regulatory positions; often, this means they are “actively involved in the very forms of misconduct that they are responsible for overseeing” (Muzio et al., 2016: 143).

Several participants in the study mentioned being caught in these conflicted roles. As one practitioner recalled, “I was sent by the British government to Turks and Caicos in 1969 to look at the financial service laws and establish a financial services commission. Part of my remit at that time was, ‘these islands are costing the British taxpayer a fortune, so we want you to encourage offshore banking and offshore corporations’ to develop economic independence there...things like tax avoidance schemes that David Cameron would rail against now” (London 3). In other words, this wealth manager was asked *by the state* to create institutional conditions for a new tax avoidance industry on the island. His story is consistent with decades of scholarly research showing that many of the onshore states that publicly rail against offshore tax avoidance have privately supported it—and built institutions to make it possible—for decades (Sharman, 2006). In some cases this is a matter of ideology, as with the right-wing politicians promoting an anti-tax platform (Harding, 2016a); in other cases, supporting tax avoidance forms part of “deliberate development policies” for former colonies (Palan, 2002: 154).

In either case, the double game many states play may actually encourage professional wrongdoing, not only by sowing confusion, but also by giving undue authority to experts in the governance process (Sikka and Wilmott, 2013). This is because, in addition to their role as regulators, wealth



managers often take a role in the legislative process. This means lobbying lawmakers and actively participating in drafting the laws that govern their own practices (Palmer, 2013). Finally, even when states engage wealth managers to close loopholes (Hofri, 2014), the result is often further dependence on experts and more incentives for wrongdoing (Winters, 2014; see Appendix).

**The impact of globalization.** The increasing importance of small, offshore states highlights the significance of globalization in professional wrongdoing. When one state tightens its rules to deter tax avoidance, other states—usually offshore—now respond strategically, tailoring their own regulations to attract those put off by the new restrictions. As global professionals (Winters, 2011), wealth managers often play both sides in this contest, advising one jurisdiction on tightening rules while helping another state loosen theirs (Hofri, 2014).

This works because of the increasing independence of high-net-worth individuals and their fortunes from the constraints of any individual nation-state. The hypermobility of “the stateless super-rich” (Paton, 2015) and their capital makes it possible to elude the taxation policies of any given country, and to exploit the plentiful opportunities to shelter assets offshore (Sikka, 2007). As one London-based wealth manager put it, globalization has greatly diminished the power of the state as a social control agent:

“Unfortunately, the internationalization of the world that began in the 1950s and 60s meant that people became more mobile and started looking for ways to reduce the sizable tax burdens that were imposed on them by the demands of social welfare. Hence the jet age, mobility and the growth of low-tax jurisdictions... Governments were used to pulling the strings, but now they’re dependent upon the wealth creators. I think what people fail to realize is that governments are now just little parishes” (London 1).

For similar reasons, this shift in the power dynamic between private capital and the state also protects wealth managers: with their role in writing the laws that govern tax avoidance, it is trivial

for professionals to construct tax avoidance strategies that comply with legal formalities. This protects them from charges of illegal wrongdoing.

In other words, globalization means that the problem of tax avoidance doesn't stop when a state acts to close legal loopholes: instead, the problem simply migrates to friendlier jurisdictions. Either way, the professionals win, either by profiting from complexity (like the South African practitioner quoted above) or by earning consulting fees on the creation of new, avoidance-friendly laws. This creates powerful incentives for wrongdoing.

By the same token, globalization reduces the ability of the professional society to monitor and sanction its members. Recall that STEP, based in London, represents wealth managers in 95 countries. Practitioners are simply too remote from the organization for it to have meaningful control over their behavior. None of the 65 people I interviewed—some of whom were high-level officials within STEP—knew of any instance of a member being sanctioned for ethics violations. This absence of disciplinary action also creates conditions ripe for misconduct; whereas the competition among states creates economic incentives for wrongdoing, the lack of ethics enforcement by the professional society offers the opportunity to act without consequence.

There are, however, potential positives to globalization, in terms of providing wealth managers with alternatives to wrongdoing. For example, the same geographical dispersion that protects practitioners from meaningful sanctions from the professional society can also protect whistleblowers. The global ecology provides hiding places for good guys, as well as for bad. This has so far proved extremely useful for John Doe, the whistleblower behind the Panama Papers. Despite being responsible for the largest data leak in history, and certainly one of the most damaging to the world's political and economic elites, no one knows Doe's identity or location—even the journalists with whom Doe was in contact for years (Obermayer and Obermaier, 2016). Doe's continued freedom sets an important precedent for other would-be whistleblowers, particularly those who—like the subset of those

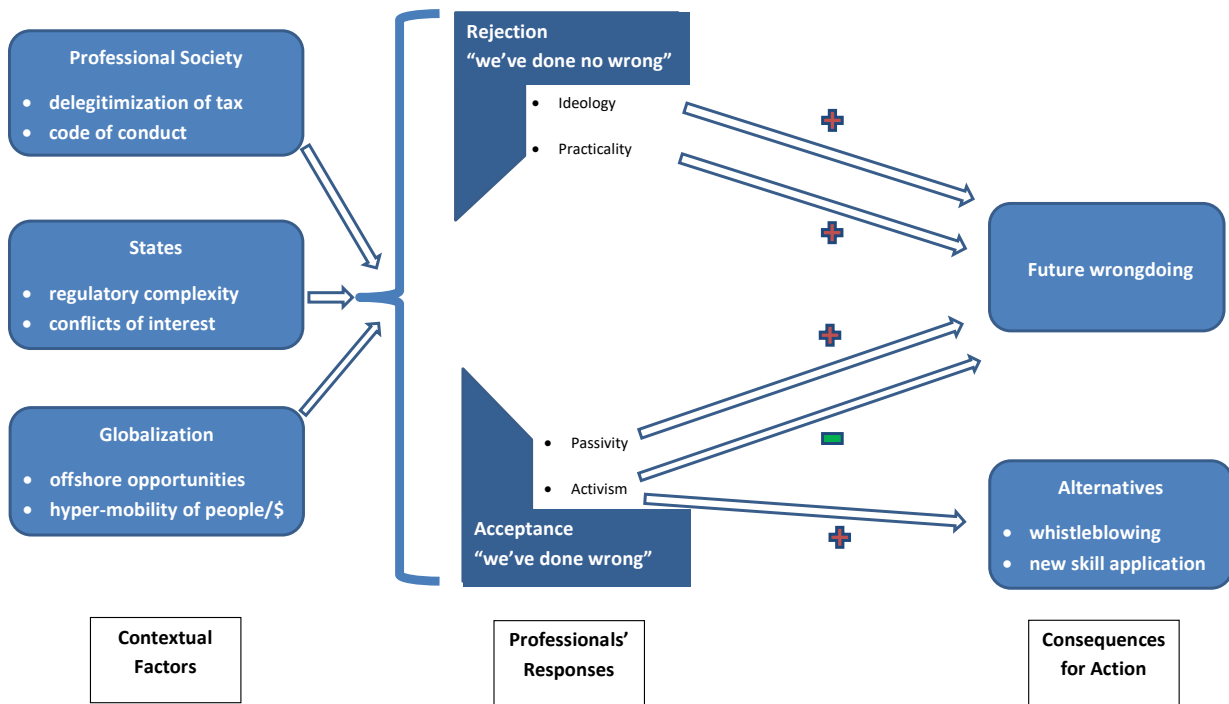
interviewed for this study—already acknowledge that tax avoidance is wrong and wish to take meaningful action to stop it.

Globalization could also act as a positive force by offering wealth management professionals alternatives to tax avoidance as source of income. The increasingly global nature of work, coupled with the mobility of workers, has produced intense demands for complex international salary and pension payments (Campbell, 2013). These skills are in short supply, creating a competitive advantage for wealth managers (see Appendix).

## **DISCUSSION**

Based on the analysis offered above, the following model is proposed. Its underlying thesis is that professional wrongdoing is more or less likely to occur depending on the context in which specific types of individual agency arise. Figure 1 uses plus signs to indicate increased chances of wrongdoing, and minus signs to indicate reduced chances of wrongdoing. These symbols are not intended to imply a specific numerical value, but rather to serve as the conceptual basis for generating hypotheses and future research.

**Figure 1: Professional agency in an ecology of wrongdoing**



The model represents individual agency through the aggregate orientations professionals can develop in relation to wrongdoing: rejection and acceptance. As the analysis showed, professionals develop these understandings through a combination of their own experience and messages assimilated from the environment. The data suggest that rejection and acceptance of professional wrongdoing are not monolithic, but varied in their characteristic forms. In this case, rejection may take either an ideological or practical bent, while acceptance may be either passive or active. Three of the four orientations—all but active acceptance—are predicted to lead to further wrongdoing. Those who actively accept responsibility for professional wrongdoing are expected to be more likely to seek alternatives, such as redirecting their expertise to less harmful ends, or becoming whistleblowers.

The three contextual factors shown in the model—the professional society, the state and globalization—influence wrongdoing in distinct ways. While the professional society primarily shapes ideas about tax avoidance, the state and globalization create the opportunity structure in which it occurs. The ideas promulgated by the professional society influence practitioners’ understandings and behavior by delegitimizing taxation and giving the appearance of ethical sanction to tax avoidance. The impact is either to encourage tax avoidance as a social good, or to create enough moral ambiguity that practitioners will continue facilitating avoidance despite their personal belief that it is wrong. Notably, however, some professionals have resisted this influence; instead, they have accepted the view (partly promulgated by the state) that tax avoidance is a form of wrongdoing they must purposefully counteract. In this way, the model identifies a unique contribution of individual agency within a larger “ecology of wrongdoing” (Muzio et al., 2016).

The state plays a dual role in creating the context for wrongdoing, at least in the case of tax avoidance. On the one hand, policy-makers’ increasingly pointed condemnations of professionals who facilitate tax avoidance send a clear message: this is misconduct, even if it is formally legal. So far, the state’s actions on tax avoidance have consisted primarily of shaming; but this also carries with it the threat that legal boundaries of acceptable conduct will be revised in future to ensure that what is now in a grey area becomes unambiguously illegal. All of this discourages wrongdoing. But at the same time, states frequently undermine this social control effort by increasing legal complexity—creating new business opportunities for experts—and by asking professionals to regulate each other or even write the laws that govern their own behavior. These create tempting opportunities for professionals to blur ethical lines and even to profit from wrongdoing.

Globalization has a similarly ambivalent effect. For one thing, it offers ample opportunities to commit wrongdoing in secret, simply by making it difficult to monitor and sanction what professionals are doing. As professions become more widely distributed geographically, social

control agents have increasing difficulty detecting wrongdoing; and even when this hurdle can be overcome, punishment may be difficult to enforce across state boundaries. This same pattern of conflict and competition among states gives cover to professionals engaged in “grey areas” of conduct such as tax avoidance, allowing them to play legal systems off against one another to create useful ambiguities. However, this cuts both ways: the same problems that allow professional wrongdoing to thrive can also offer protection to whistleblowers and opportunities for innovators who find socially beneficial ways to address the gaps in states’ legal and financial coordination.

## **CONCLUSION**

This paper expands on constructivist theories of professional misconduct by accounting for agency and variation at the level of individual practitioners. While acknowledging the impact of the social control agents at the center of constructivist theories, this study contributes a more detailed and granular model of wrongdoing. It suggests that professionals are neither “bad apples” nor passive recipients of social control. Instead, within a context of influence from states, professional societies and globalization, practitioners retain the ability to formulate independent understandings and lines of action with regard to misconduct. The model specifies two general orientations for individuals—acceptance and rejection of the wrongdoing label—and suggests testable propositions about their relationship to future wrongdoing.

As with other inductive studies, this paper seeks to generalize from a particular case to develop a basis for new research. In addition, the case itself is of some scholarly value. A singular contribution of this study is the light it sheds on an empirical phenomenon that previous scholars have identified as particularly fruitful for the study of professional wrongdoing: tax avoidance. Lying in a grey area between illegal activity and social legitimacy, tax avoidance has been the subject of aggressive contestation and “boundary work” (Cooper, Dacin and Palmer, 2013: 452) among social control agents—particularly since the Panama Papers leak of 2016.

This paper offers a novel way of examining this phenomenon, by bringing in the perspective of the professionals who facilitate tax avoidance for high-net-worth individuals: wealth managers. While other studies of tax avoidance have focused almost exclusively on organizational actors (e.g., Sikka and Wilmott, 2013), this paper innovates by turning analytical attention to the individual practitioners who have been neglected in previous constructivist research. The dataset is also notable for its global perspective, representing insights from practitioners in 18 countries. Finally, this study offers some practical contributions toward understanding of professional wrongdoing. For example, it highlights some points of leverage—such as the ideological influences on misconduct—and suggests how potential whistleblowers might be identified.

However, the case presented here also has some significant limitations. Although the data were collected over nearly a decade, the 65 interviews which form the centerpiece of the analysis were each one-time events. Thus, they represent snapshots of agency rather than an ongoing view of individuals responding to social control and opportunity structures. Future research would benefit from a methodology that better captured individual agency in process; this would improve theoretical models of conflict and change at the practitioner level. In addition, the case selection has some drawbacks. While analyzing wealth management provides unusual insight into the practices surrounding tax avoidance, the distinctive characteristics of the profession—including its normative and legal commitments to secrecy—mean that the case cannot provide insight on the role of firms as social control agents. This constitutes a missing piece of the model which will have to be filled in by future research.

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## Appendix: Further detail on contextual factors

**The professional society.** STEP's communications strategy renders tax avoidance acceptable by portraying taxation itself as unethical and politically illegitimate. This point of view is promulgated not only in the organization's training manuals, but in statements made by STEP's leaders at professional society meetings. For example, one official remarked at a 2010 conference in Hong Kong, before an audience of thousands of practitioners, that tax collection agencies were "robber barons" and their investigations constituted "politically motivated" attacks.

This perspective is echoed, albeit in milder terms, by the organization's public statements and publications. For example, a 2012 *STEP Journal* article on US Presidential candidate Mitt Romney characterized his tax avoidance scandal—in which he acknowledged paying just 13.9% tax on his multi-million-dollar income—as "supposed wrongdoing." A policy memorandum directed at the OECD was more blunt, characterizing the international organization's efforts to crack down on offshore tax avoidance as "economic discrimination" motivated by neo-colonial arrogance (STEP, 2007; see also Parkinson and Jones, 2008: 268). Casting doubt on the motives and legitimacy of critics serves to undermine the very notion of tax avoidance as wrongdoing.

STEP has also given cover to tax avoidance through its publications on professional ethics. Under the heading of clarifying the ethical position of practitioners, the professional society consistently reverts to the *legal* position. That is, instead of using its role as a social control agent to delineate right and appropriate conduct for members, STEP simply returns, again and again, to the question of what is permissible under the laws. Thus, the training manuals contain statements such as "It must be stressed at the outset that, as responsible professionals, you are concerned with tax *avoidance*, not tax evasion" (Parkinson 2004: 5). The distinction, of course, relies on the state's definition of evasion, which is illegal. The manual is telling practitioners that whatever is legal is fair game.

In other words, the line of acceptable conduct is whatever the state allows; this is a restatement of legal limits masquerading as a statement of ethics. This approach is repeated in STEP's public documents. Shortly after the Panama Papers leak, *STEP Journal* published an article titled "The only way is ethics," which exhorted members to avoid "unethical activity," but then characterizes public criticism of tax avoidance as a "fundamental misunderstanding" of the profession's work (Halpern, 2016: 23). The article also refers practitioners to the organization's 2009 Code of Professional Conduct, which makes no mention of tax at all. Six months after the Panama Papers broke, STEP published a document titled Professional Conduct in Relation to Taxation, but—again—it failed to take any ethical position, instead reverting to the state to define the boundaries. The key passage reads:

"tax authorities internationally are increasingly considering whether some cases of tax avoidance may involve elements of criminal behaviour. A member should remain vigilant to the possibility of tax evasion when involved in what is ostensibly lawful planning" (STEP, 2016: 52).

This gives practitioners no actual guidance on ethics; it simply reminds them to be aware of the legal limitations they face from the state.

**The role of the state.** The power of wealth managers to shape the law is difficult to overstate. In a particularly telling example, Ramon Fonseca—a founding partner of the wealth management firm implicated in the Panama Papers—was until recently a minister in the Panamanian government, and continued to "drop into weekly Cabinet meetings by helicopter" even after his formal position ended (Harding, 2016a). Several practitioners interviewed for this study described having similar, albeit less high-profile, roles in making the laws that govern their own practices. One wealth manager said it wasn't a special honor for him, but just "how things get done." "Here in Hong Kong, the law is very profession-driven: the professions tell the government what laws need to be made. I am part of that process, and I'm advising Singapore and Malaysia on their new trust laws as well" (Hong Kong

1). All of these roles create ample opportunity for professional wrongdoing by putting experts in charge of drawing the legal boundaries that govern them and their colleagues.

Even when a “crackdown” on tax avoidance seems to be in the works, that usually creates a new windfall for wealth managers (Winters, 2011). Crackdowns usually mean more complexity, which in turn represents new opportunities for experts to find loopholes; sometimes, states explicitly authorize wealth managers to create these loopholes for themselves as a reward for assistance in drafting legislation (Hofri, 2014). As one South African practitioner described the process, any attempts by states to stop tax avoidance only meant more business for them:

“The trend is going to require us to be more creative as regulations become stricter and companies are required to be more transparent. The closing of tax loopholes is good business for us, because we get paid to deliver opinions. Even though tax is becoming a stumbling block for high-net-worth individuals, that doesn’t affect our business. If you go anywhere in the world, some of the top tax practitioners in the world—US, London, Australia—are South African. Because we have such a complex system, we produce some of the most creative tax advisers in the world” (South Africa 2).

So while the state can act as a social control agent in cases of professional wrongdoing, it can also create perverse incentives like these related to complexity in tax law. Even sincere efforts to curtail tax avoidance end up creating more opportunities for the lucrative practice of “creative compliance” (McBarnet, 2005) by wealth managers, increasing the incentives for wrongdoing.

**Globalization.** Globalization can act as a positive force to reduce professional wrongdoing in two ways: by giving cover to whistleblowers and by providing alternatives to redirect professional skills toward activities that benefit (or at least do not harm) the common good. As an example of the latter case, one practitioner in Dubai described a typical scenario, in which he had to organize salaries for an international team working on a project in Sudan. The challenge was not just the lack of a reliable

local banking system, but the question of how to cope with the multiple international regulations that applied to the team. This is where experience in globalized tax avoidance proved invaluable:

“the payroll has to be organized centrally, preferably from an offshore location for tax reasons. That’s because you’d have perhaps 20 different nationalities represented among your employees, and the employer is in yet another jurisdiction; if you pay someone who is a U.S. national working in the U.K., you run into double- tax issues, the obligation to deduct tax at source or in some other way. But if you pay the staff from an offshore, nil- tax jurisdiction, you avoid the onus of dealing with all that regulation of different countries (which is always changing anyway). Instead, you put the onus of the tax responsibility on the employee and you pay them gross” (Dubai 2).

This job, in other words, represented a direct transfer of skills from international tax avoidance to payroll—a giant step out of the ethical grey area for professional conduct.

Several other practitioners described being engaged in similar work, highlighting the unique position wealth managers had in capturing this market niche. A Mauritius practitioner, for example, said that his firm was approached by a Hollywood film producer to handle a complex payroll system for the cast and crew of 3,000 people who would be working for months on a remote island in Thailand: the bulk of their salaries needed to be deposited for the benefit of their families back in their home countries, with just a little made available to them for local use. “Now try to get an accountant in LA to do something like that,” said the Mauritian practitioner. “They couldn’t! It was totally beyond them. So the producers had to come to us and we said ‘Sure, we can do that—we do things like that all the time’” (Mauritius 1). As globalization offers more such projects, it may create more opportunities for wealth management to distance itself from the associations with unethical tax avoidance that have tarnished its reputation in recent years.



This study offers an account of individual agency within a constructivist view of professional wrongdoing. The main contribution is a model in which the neglected role of individual professionals is foregrounded, offering the basis for testable propositions about future misconduct. Professionals are represented in the model neither as “bad apples” nor as passive recipients of social control; instead, they formulate independent understandings of wrongdoing and lines of action in response to the combined influences of globalization and of collective actors, such as states and professional societies. The model is derived inductively from data on the wealth management profession, which specializes in developing tax avoidance strategies for high-net-worth individuals. This case is particularly appropriate because tax avoidance is among the most hotly-contested domains of professional misconduct globally, particularly following the Panama Papers scandal of 2016. Drawing from 65 interviews with wealth managers in 18 countries, supplemented by data from newspaper accounts and the professional association, the analysis yields a model that adds granularity and variation to the constructivist approach.

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